

**Summary of IDEM Workgroup Meeting
ANTIDEGRADATION/OSRW**

Monday, February 24, 2003

IDEM, 2525 N. Shadeland Ave., Conference Room D, Indianapolis
10:00a.m. – 3:00p.m. E.S.T.

Introduction:

On Monday, February 24, 2003, IDEM staff met for the fifth time with a wide cross-section of stakeholders which make up the Antidegradation/OSRW workgroup. These notes are intended to be a summary of the major points from the meeting held at IDEM's Shadeland offices.

The meeting was called to order by Larry Wu. Those in attendance for all or part of the meeting included: Art Umble, Bill Beranek, Bowden Quinn, Charlotte Read (by speakerphone), Neil Parke, and Ralph Roper.

In addition, the following IDEM staff members were present for all or part of the meeting: Dennis Clark, John Nixon, and Megan Wallace.

Summary:

The workgroup discussed the following:

1. The minutes from the January 24, 2003 meeting were approved with the correction of the January meeting being our fourth meeting instead of third. Dan Olson provided comments via email. Dan's comment that Pennsylvania and West Virginia were being added to the state comparison list for the reason that the majority of Indiana has more in common with the Ohio River Basin than the Great Lakes System was added to the minutes.

Dan stated on 2.B.2. (Environmental Justice) that if a business is forced to move to a location with cleaner waters, it is not for the purpose of maintaining the already degraded waters or to permit degradation of the cleaner waters but to prevent further degradation of the "less clean" waters. Dan added that encouraging development on brownfields is warranted as long as the entity proposing to develop the site is aware of the history and what restrictions that history may bring. The minutes will be posted on IDEM's Triennial Review website.

2. Environmental Justice Representative – Charlotte Read requested a qualified environmental justice representative be added to the workgroup.
 - A. Dana Reed Wise was suggested as an IDEM person.
 - B. Glenn Pratt, Tom Neltner and Keith Veal were suggested as non-IDEM possibilities.

3. Discussion of Policy Issues

A. What is necessary?

1. Look at Best Available Technology (BAT) as the starting point. Is it acceptable, affordable, and a treatment technique that could be applied? Where the WQAG left off.
2. Look beyond BAT. How far do we look beyond BAT? At some point the incremental benefit is not justifiable.
3. Bright Line cost was discussed. An example was demonstrated that if a company's capital is worth \$100 million and a certain treatment technique cost more than \$10 million (a certain percentage of the project cost), it wouldn't be looked at as an acceptable treatment technique. Charlotte was concerned that a bright line not lead to an automatic "yes" for "necessary".
4. Two tests vs. One test – This is the question of whether the "necessary" and "important economic or social development" are two separate tests or one test ("necessary to accommodate important economic or social development").
 - a) It is decided that it isn't really one test no matter how you look at it. An antidegradation review would consist of several factors including: looking at different treatment options, pollution prevention, economical situations, unused loading capacity, etc.
 - b) After all factors are examined, someone would decide which is the best treatment technique, where you get the most benefit for the least economical impact.
5. Discussion of "knee of the curve" and how it applies.
 - a) It is a tool to demonstrate where "diminishing returns" come into play.
 - b) It is decided that it is a good tool to include as part of an antidegradation review.
 - c) The group decided to call it an "acceptable alternatives analysis" instead of knee of the curve. Knee of the curve is associated with CSOs.
6. Every antidegradation review will be done on a case by case analysis based on what the communities involved want. At the same time, there is a need to compare what is being done in one part of the state versus another.

B. Can antidegradation legislation cause a roadblock to doing what is environmentally correct? There needs to be language that the rule is not intended to be a source of environmental gridlock.

1. Concern was raised that there may be instances where correcting a serious problem could trigger the need to perform an antidegradation demonstration, ultimately preventing the resolution of the serious problem.

2. A community may need a variance and antidegradation does not allow variances.
3. Concern that unrelated criteria (e.g., TDS) could become part of antidegradation.
- C. Who decides what is “necessary”?
 1. It is decided by IDEM through a public process.
 2. The commissioner ultimately decides.
- D. How large of an “area” participates in the decision of what is “necessary”?
 1. Charlotte Read suggested the immediate area plus downstream.
 2. Art Umble suggested “potentially affected parties”.
 3. Denny Clark envisions public meetings being held in a local area.
 4. John Nixon reminds the workgroup that all comments received at comment periods and hearings must be responded to. The process could be similar to the existing process for NPDES permit modifications.
 5. Environmental justice issues:
 - a) “Which comments get more weight, the people who are more directly affected or the people several counties over?”
 - b) “How far does the net get cast?”
 6. Denny Clark suggests that in the antidegradation application, it should state what area is being affected. The people in that area should be involved in the decision. Charlotte added that it seemed reasonable but the problem is with the exceptions.
 7. John Nixon suggests a notice of local areas (the potentially affected parties) and then a separate list of parties to be informed (mailing list).

4. Discussion on Technical Issues

- A. From the 1999 second notice draft: 327 IAC 2-1-2 through 2.4 and 327 IAC 5-2-1.1.
 1. Charlotte Read suggests that the environmentalists had a problem with Tier 2.5 Outstanding Historical State Resource Waters.
 2. Since general criteria exists, do we want to try and put specifics in the rule?
 3. Does IDEM need to protect urban waters the same as DNR would protect wild and scenic waters?
 4. John Nixon stated that the designation for OSRWs does not need to be in rule language. The board may designate (See, SEA 431) or a citizen’s petition may be used. A question was raised whether implementation procedures must be first developed before redesignation can occur.
 5. The workgroup decided to look at Tier 2 implementation procedures before Exceptional Use and Outstanding State Resource Waters.
 6. GLI versus non-GLI. Denny Clark stated that the intent of the 1999 draft second notice was to have a single statewide standard. Responding to

Bill Beranek, he indicated that the goal was to implement the existing GLI downstate.

7. The question of whether the “necessary” and “important economic or social development” are two separate tests or one test was raised for the second time. Bowden Quinn cited Michigan where social/economic was addressed first, then the technical necessary was addressed. Bill Beranek stated that if an unused loading capacity determination were made, there might not be a need for an antidegradation demonstration. Therefore, Bill suggested that the when discussing an antidegradation demonstration, the unused loading capacity was the base. Part of the wasteload allocation. How do we deal with the alternatives? How do we do better? Then, how do we deal with social/economic? Larry Wu suggested that affected parties could be allowed to decide whether to first address technical or social/economic.

- B. Part of the workgroup wants the standards to be identified pollutant by pollutant. There is no consensus on this issue yet.

5. Suggestions for new format on First Notice of Comment Period

- A. Include more policy questions that workgroups are discussing.
- B. Guide public on what types of things we want comments on.

6. Next steps

- A. Look at existing language from the 1999 second notice draft to see what language works and identify possible stumbling blocks. Charlotte felt there were a lot of good things in the 1999 draft. Bowden felt the next agenda needed to spell out specific questions for the workgroup to address. Denny asked that workgroup members identify what parts of 1999 were OK for use in the current rulemaking effort. Neil Parke asked that folks look at: 1) what process is needed to implement OSRWs, and 2) what needs to be in the rule.
- B. Art Umble asked why implementation was necessary before (h), (i), and (j) on page 7 of SEA 431. The workgroup asked if John Nixon could look into this question and report back at the next meeting.
- C. Bowden Quinn asked if (n) on page 9 of SEA 431 mandates “net improvement” procedures. Further, he asked if new OSRWs and existing OSRWs are treated differently.
- D. Ralph Roper asked that the workgroup look at a Federal Register excerpt from November 14, 2002 on Kentucky’s Water Quality Standards. It was noted by Neil Parke that it represented the thinking of EPA headquarters. It may provide valuable insight as to our approach to antidegradation.

7. The next meeting will be Monday, March 17, 2003 from 10:00a.m. to 3:00p.m., at IDEM, 2525 N. Shadeland Avenue, Conference Room C, Indianapolis.